



This Recommended Order and Decision became the Order and Decision of the
Illinois Human Rights Commission on 10/06/04.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
ROY L. CORTES,)	
)	
)	
Complainant,)	
)	Charge No.: 1999CA2311
and)	EEOC No.: 21B991689
)	ALS No.: 11315
INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL)	
1031,)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On July 3, 2000, Complainant, Roy L. Cortes, filed a complaint on his own behalf against Respondent, International Brotherhood of Electrical Workers, Local 1031. That complaint alleged that Respondent discriminated against Complainant on the bases of his age and a physical handicap when it discharged him.

This matter now comes on to be heard on Respondent's Verified Motion to Dismiss. Although Complainant was given an opportunity to file a response to the motion, no such response was filed and the time for filing has ended. The matter is ready for decision.

FINDINGS OF FACT

The following findings were derived from the record file in this matter.

1. On or about April 9, 1999, Complainant filed his charge

of discrimination against Respondent with the Illinois Department of Human Rights (IDHR).

2. IDHR dismissed Complainant's charge for lack of jurisdiction and lack of substantial evidence on April 24, 2000.

3. Complainant did not file a timely Request for Review on his dismissed charge.

4. On July 3, 2000, Complainant filed his complaint before the Human Rights Commission.

CONCLUSIONS OF LAW

1. IDHR's dismissal of Complainant's charge was a final order disposing of that charge.

2. The Human Rights Commission has no authority to consider the complaint filed by Complainant.

3. The complaint in this matter must be dismissed with prejudice.

DISCUSSION

On or about April 9, 1999, Complainant filed his charge of discrimination against Respondent with the Illinois Department of Human Rights (IDHR). About a year later, on April 24, 2000, IDHR dismissed Complainant's charge for lack of jurisdiction and lack of substantial evidence. Complainant did not file a timely Request for Review. Instead, on July 3, 2000, he filed a complaint against Respondent before the Human Rights Commission.

Under section 5/7A-102(G)(1) of the Human Rights Act (775 ILCS 5/1-101 *et seq.*), once the time for investigation has run,

the IDHR "shall either issue and file a complaint ... or shall order that no complaint be issued and dismiss the charge with prejudice without any further right to proceed." In this case, IDHR determined that no complaint should be issued on the charge. Once that determination was made, Complainant lost any opportunity to file a complaint on his own behalf before the Commission. *Wallace and Human Rights Commission*, 261 Ill. App. 3d 564, 633 N.E.2d 851 (1st Dist. 1994). At that point, Complainant's only remedy was to file a timely Request for Review.

Because IDHR had already dismissed the underlying charge and ordered that no complaint be filed, and did so before Complainant filed his complaint, the Human Rights Commission never acquired the authority to consider that complaint. As a result, that complaint must be dismissed with prejudice.

RECOMMENDATION

Based upon the foregoing, the Human Rights Commission has no authority to hear the complaint filed in this matter. Accordingly, Respondent's motion to dismiss should be granted and the complaint dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: August 12, 2003